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9 BIC USA, INC.

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 DONNA R. NELSON, an individual and  
13 on behalf of the general public,

14 Plaintiff,

15 vs.

16 BIC USA, INC., a Delaware corporation,  
and DOES 1 through 100, inclusive,

17 Defendants.  
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19  
20  
21  
22  
23

CASE NO.: 3:07-cv-2367 LAB RBB

**DEFENDANT BIC USA, INC.'S  
NOTICE OF MOTION AND  
MOTION TO DISMISS THE  
FIRST AMENDED COMPLAINT**

*Accompanying Papers:*  
(1) Memorandum of Points and  
Authorities in Support of Motion;  
(2) Notice of Lodgment of Exhibits in  
Support of Motion

Date: September 8, 2008  
Time: 11:15 a.m.  
Courtroom: 9  
Judge: Hon. Larry A. Burns

24 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

25 PLEASE TAKE NOTICE that on September 8, 2008, at 11:15 a.m. or as  
26 soon thereafter as this matter may be heard, in Courtroom 9 of the above-entitled  
27 Court, located at 940 Front Street, San Diego, California, defendant BIC USA,  
28

1 INC. (hereinafter "BIC,") will, and hereby does, move for an order, pursuant to  
2 Rule 12 (b)(6) of the Federal Rules of Civil Procedure, dismissing the claims set  
3 forth in the First Amended Complaint in this action on the ground that the First  
4 Amended Complaint fails to state a claim on which relief may be granted because  
5 the California statutes the claims allege BIC violated are preempted by federal law.

6 This motion is based on this notice, the accompanying memorandum of  
7 points and authorities, the exhibits attached to the Notice of Lodgment filed  
8 herewith, the pleadings on file in this action, and any oral argument that may be  
9 heard by this Court.

10  
11 Dated: July 1, 2008

GORDON & REES LLP

12  
13 By: 

14 Kevin W. Alexander  
15 Richard R. Spirra  
16 Manuel S. Saldana  
Attorneys for Defendant BIC USA,  
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12 **BIC USA, INC.**

12 **UNITED STATES DISTRICT COURT**  
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19 BIC USA, INC., a Delaware corporation, and  
DOES 1 through 100, inclusive,

20 Defendants.

CASE NO. 3:07-CV-2367- LAB(RBB)

PROOF OF SERVICE

22 I am a resident of the State of California, over the age of eighteen years, and not a party  
23 to the within action. My business address is: Gordon & Rees LLP 101 W. Broadway, Suite  
24 2000, San Diego, CA 92101. On July 2, 2008, I served the within document:

25 **DEFENDANT BIC USA, INC.'S NOTICE OF MOTION AND MOTION TO**  
26 **DISMISS THE FIRST AMENDED COMPLAINT**

- 1 ☐ **BY FACSIMILE, [Fed. Rule Civ. Proc. Rule 5(b)]** by sending a true copy from Gordon  
2 & Rees LLP's facsimile transmission telephone number (619) 696-7124 to the fax  
3 number(s) set forth below, or as stated on the attached service list. I am readily familiar  
4 with the firm's practice for sending facsimile transmissions, and know that in the ordinary  
5 course of Gordon & Rees LLP's business practice the document(s) described above will be  
6 transmitted by facsimile on the same date that it (they) is (are) placed at Gordon & Rees  
7 LLP for transmission.
- 8 ☒ **BY U.S. MAIL [Fed. Rule Civ. Proc. Rule 5(b)]** by placing a true copy thereof enclosed  
9 in a sealed envelope with postage thereon fully prepaid, in United States mail in the State  
10 of California at San Diego, addressed as set forth below. I am readily familiar with the  
11 firm's practice of collection and processing correspondence for mailing. Under that  
12 practice it would be deposited with the U.S. Postal Service on that same day with postage  
13 thereon fully prepaid in the ordinary course of business. I am aware that on motion of the  
14 party served, service is presumed invalid if postal cancellation date or postage meter date is  
15 more than one day after the date of deposit for mailing in affidavit.
- 16 ☐ **BY ELECTRONIC FILING.** I caused all of the pages of the above-entitled document(s)  
17 to be electronically filed and served on designated recipients through the Electronic Case  
18 Filing system for the above-entitled case. The file transmission was reported as successful  
19 and a copy of the Electronic Case Filing Receipt will be maintained with the original  
20 document(s) in our office.

**John H Donboli**

21 Del Mar Law Group, LLP  
22 322 Eighth Street  
23 Suite 101  
24 Del Mar, CA 92014  
25 Email: [jdonboli@delmarlawgroup.com](mailto:jdonboli@delmarlawgroup.com)

26 I am readily familiar with the firm's practice of collection and processing correspondence  
27 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
28 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
motion of the party served, service is presumed invalid if postal cancellation date or postage  
meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above  
is true and correct. Executed on July 2, 2008, at San Diego, California.

  
Carolina Mendieta